**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 2**

**MEN'S WAREHOUSE, INC.**

**Employer**

**and** **CASE NO. 2-RC-22612**

**LOCAL 1102, RWDSU, UFCW, AFL-CIO, CLC**

**Petitioner**

## DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Gregory B. Davis, a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2. Upon the entire record [1] in this proceeding, it is found that:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The record reflects that Men's Warehouse, Inc., herein the Employer, is a Texas corporation, with principal places of business located at 5803 Glenmont, Houston, Texas and 40650 Encyclopedia Circle, Freemont, California. The Employer is engaged in the retail sale of men's tailored clothing and business attire and has numerous stores nationwide, including a store located at 380 Madison Avenue, New York, New York. Annually, in the course and conduct of its business operations, the Employer generates gross revenues in excess of $500,000 and purchases and receives at its New York

[1] Briefs were filed by the Employer and Petitioner and have been duly considered.

facility goods and materials valued in excess of $5,000 directly from suppliers located outside the State of New York. Based upon the record and the stipulations of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that Local 1102, RWDSU, UFCW, AFL-CIO, CLC, herein the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

5. Petitioner amended its petition at the hearing and seeks to represent a unit comprised of all full-time and regular part-time wardrobe consultants, tailors, senior sales associates, sales associates and tuxedo representatives employed by the Employer at its store located at 380 Madison Avenue, New York, New York, excluding store managers, assistant store managers, shoe managers, [2] field operator trainers, other managerial employees, and guards, professional employees and supervisors as defined in the Act. The Employer contends that the unit sought by the petition is not appropriate for collective bargaining as the smallest appropriate unit would consist of six stores, including the Madison Avenue store, that are located in the New York City greater metropolitan area and comprise one of the Employer's districts. The Employer contends that the fundamental decisions affecting the employees in the six stores are made by a district manager at the district level and there is substantial interaction among

[2] At hearing, the Petitioner contended that the position of shoe manager was supervisory, and thus, sought to have it excluded from the petitioned-for unit. The Employer asserted that the position is not a supervisory one and should be included in any unit found appropriate herein. Although Petitioner has not formally moved to amend the Petition, in its brief it states that it does not contest the Employer's claim regarding the employee status of shoe managers. For the

the employees of the six stores. Thus the Employer asserts that the employees in the six stores in this district must be found to constitute a single bargaining unit. Petitioner, on the other hand, asserts that the petitioned-for unit, consisting of all full-time and regular part-time employees of the Employer at a single location, is presumptively appropriate, and that the Employer has not met its burden of establishing that the unit as sought is not appropriate. At the hearing, the Petitioner indicated its desire to proceed to an election in any unit found to be appropriate.

## THE EMPLOYER'S OPERATION

The Employer operates approximately 500 retail stores throughout the United States. Individual stores are aggregated into 18 regions, with each region divided into between three to seven districts. In addition, each district is comprised of between six and ten stores. In the New York metropolitan area, the Employer operates four districts all of which are overseen by Regional Manager Ralph Russo.[3] The district containing the petitioned-for location, called NYCA, consists of six stores, three of which are located in Manhattan: 380 Madison Avenue: (Madison Avenue); 115 Broadway (Wall Street); 20th Street and 6th Avenue (Chelsea); and three of which are situated in suburban New Jersey, referred to as Edgewater, Paramus and Ledewood. The record fails to contain evidence regarding the geographical distances between the stores.

## NYCA DISTRICT

The NYCA district is under the direction of District Manager Larry Berkowitz. Berkowitz does not maintain a separate office, and spends most of his time circulating among the six stores within his district. Generally, he will visit a store once per week or,

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reasons set for the below, I find that the position of shoe manager is not a supervisory one within the meaning of the Act, and should be included in the unit found to be appropriate herein.

[3] The geographic areas covered include New York City, northern and central New Jersey, southern Connecticut, Westchester County, Long Island and Queens.

at a minimum, once every ten days. Occasionally he will spend two days per week at the Madison Avenue store, as that is the largest store within his district.

**A. Employee complement in each store**

Each of the stores located with the NYCA district employs the same classifications of employees: wardrobe consultants, sales associates, tuxedo representatives, tailors, senior sales associates, shoe managers, assistant managers and managers. Wardrobe consultants assist customers through the selling process, from beginning to end. Sales associates assist wardrobe consultants and sell shirts, ties and other accessories. Senior sales associates perform the same job as sales associates and additionally process returns or exchanges on the computer.[4] Tuxedo representatives assist those customers who wish to rent tuxedos with selection and proper fit. Shoe managers assist the wardrobe consultants and sell shoes.[5] Tailors are responsible for the fitting and alteration of garments. Karlo Sacca supervises the tailors in all six stores within the NYCA district.

In the Madison Avenue store there are nine wardrobe consultants, six sales associates, one senior sales associate, six tailors one or two tuxedo representatives and one shoe manager.[6] The other stores within the NYCA District contain fewer employees. There are 12 employees at both Edgewater and Ledgewood, 16 at Paramus and Wall Street and 22 at the Chelsea store. Employees punch in by way of fingerprint

[4] Russo testified that wardrobe consultants and sales associates receive district-wide training; however, no specific information regarding the manner, location or duration of such training was developed in the record.

[5] Russo testified that when the position of shoe manager was created in the New York region, the Employer thought there might be multiple persons in the department, and shoe managers would supervise the department. The Employer ultimately decided to have only one person selling shoes. The record reflects that shoe managers are paid hourly and receive a commission on sales. They punch in, as do other employees, use the same break facilities and receive the same benefits as other employees.

[6] The evidence establishes that all stores also have an individual in the position of assistant manager, who the parties have agreed should be excluded from any unit found appropriate. The record reflects that assistant managers work alongside the store managers, as Russo stated, to

regardless of the facility to which they are assigned, and time records are maintained centrally in the Employer's corporate offices.

**B. Responsibilities of the store managers**

With respect to employee relations, the record evidence, which is largely general in nature,[7] demonstrates that the store manager, as well as regional and district management is involved in the hiring process. An individual store manager may recommend personnel for the positions of sales associate, senior sales associate, wardrobe consultant, shoe manager and tuxedo representative. After the store manager makes his recommendation, the district manager will make a decision, based upon his conversation with the store manager, whether to interview the applicant or authorize the store manager to hire the individual. No instance of when a district manager has interviewed a job applicant or countermanded the recommendation of a store manager was developed in the record. Russo additionally testified that tailors are evaluated and hired by the regional tailor. No evidence was adduced in the record regarding any specific instance in which personnel were hired or exactly what the respective roles of the store and other managers were on such occasions. The record is also silent as to where other personnel records and disciplinary records are maintained.

The manner in which rates of pay are determined varies depending on the position. Initial compensation rates for wardrobe consultants are uniform within the NYCA district and are determined by the regional and district managers in consultation

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"drive the business;" however, in many cases they are still on commission and responsible for making sales to customers. There is no other evidence regarding their duties.

[7] The recitation of factual findings which follows insofar as it relates to the manner in which the Employer is organized, how employees are hired and supervised, terms and conditions of employment, discipline of employees and the enforcement of the Employer's policies is derived primarily from Russo's testimony, unless otherwise indicated. Although Berkowitz was called to testify, he did not address these issues with any particularity; rather, he testified, generally, that he had observed Russo's testimony, and Russo had provided an accurate description of his (Berkowitz's) job responsibilities. Berkowitz did testify with respect to the issue of employee interchange, as discussed below. The store manager of the Madison Avenue store was not called to testify in these proceedings.

with the corporation. The regional tailor, Karlo Sacca, sets compensation rates for tailors. Rates of pay for sales associates, senior sales associates, tuxedo representatives and shoe managers are determined by the district manager based upon recommendations made by the store manager in consideration of an applicant's prior experience and earnings levels. Sales associates, tailors, and shoe managers are paid on an hourly basis. Wardrobe consultants and tuxedo representatives are paid on an hourly basis plus commission. Again, no evidence was adduced in the record regarding specific wage recommendations made by a store manager, or the actions taken by district or regional management in response thereto.

Employees are evaluated annually. The store manager prepares written performance reviews, at times with the assistance or input of the district manager. The district manager may recommend that the employee receive a wage increase to the regional manger, who may, in turn, consult with his supervisor prior to granting the increase.

**Discipline**

The Employer maintains a system of discipline of its employees proceeding through coaching or discussion to written warnings, also known as personal development plans, through suspension and, eventually, termination. Store managers are involved in the coaching process and also prepare and issue written warnings to employees. Prior to doing so, the store manager will consult with the district manager and they will decide together if the warning is warranted. Similarly, the store manager will consult with Karlo Sacca, the regional tailor prior to issuing warnings to tailors under his supervision. The store manager may also recommend suspension and termination actions to his superiors. There is testimony that the district manager investigates such recommendations and will discuss possible terminations with the regional manager. In addition, the district manager may direct a store manager to issue discipline to an

employee. The record fails to disclose specific instances in which employees were disciplined, or what the respective roles of the various managers were with respect to the discipline of any particular employee. The record does establish, however, that within the past year, all recommendations of the store manager at Madison Avenue relating to suspensions and terminations of employees have been followed by district and regional management. Store Managers are also responsible for scheduling employee work hours and are authorized to approve time off. They consult with the district manger prior to authorizing overtime.

**Benefits**

Employees receive company-wide benefits such as health and dental insurance, 401K and stock option plans, tuition reimbursement and sabbatical programs. In addition the Employer maintains company-wide personnel manuals that contain, among other things, an employee complaint procedure by which employees are directed to bring such matters to the attention of the district or regional mangers or their employee relations representative. These manuals were not entered into the record herein, and there is scant testimony as to the other provisions they contain.

**C. Employee Interchange**

The record reflects that there has been some employee interchange, particularly with respect to the three Manhattan stores. Generally, employees are assigned to other locations when a store is short staffed or other employees are sick or on vacation. Additionally, the Wall Street store was closed for a period of some two and one-half months following the events of September 11, 2001, and the employees assigned to that location were temporarily transferred to other stores within the NYCA District, in particular to Madison Avenue or Chelsea.

Russo testified that over half of the non-supervisory employees working at the Madison Avenue store have been temporarily transferred since the beginning of 2002.[8] . He stated further that tailors in the NYCA typically will spend one to two days per week in other stores in the district, but could not independently recall the last time a tailor moved between store locations.[9] Sales associates may travel to another location to obtain merchandise sought by the customer that is not in stock. In addition, the record reflects that one former employee at the Madison Avenue store received a permanent transfer to a facility in New Jersey, which was closer to her home.

Berkowitz testified that he is aware of employee transfers because it is his responsibility to keep the stores properly staffed. He testified that the Employer temporarily transfers employees fifty percent of the time within the District during peak business times, the fourth quarter and vacation times. In connection with the testimony on this issue, the Employer produced certain records that demonstrate employee transfers. According to the Employer, these records are "examples" of temporary transfers among the stores, but do not constitute all the transfers effectuated. The records demonstrate that, during the period from January 28 through August 17, 2002, there were 12 instances in which individual employees were transferred from Madison Avenue to another store, usually for one, or sometimes two, days.[10] Pursuant to a subpoena from the Petitioner, time sheets for all active and terminated employees in the six stores within the NYCA district were produced for the period from December 30, 2001 to September 14, 2002. Although Petitioner alleges that these records reveal that there were “virtually no other temporary transfers to or from the Madison Avenue store,”

[8] Russo testified that this determination was reached after he reviewed time cards generated by the Employer's corporate office. These records are discussed in further detail below.
[9] Russo testified that the district manager would have that information; however, Berkowitz failed to address this issue in his testimony.
[10] In addition, one employee worked at Wall Street for one week and was thereafter permanently transferred to Madison Avenue.

the records produced demonstrate that among ten former Madison Avenue employees, there were four instances where an employee had been transferred to another store within the district. It does not appear, however, that there were additional instances of transfers involving current Madison Avenue employees during this period, other than those reflected in those documents introduced into the record by the Employer. In addition, the time records of the 62 active employees working in the other five stores within NYCA as of September 14, 2002, show that during the nine month period encompassed by the subpoena, employees were temporarily transferred from their home store to another store within NYCA on thirteen additional instances.[11]

The record establishes that when employees working at the Madison Avenue store are transferred, they are sent almost exclusively to the other Manhattan stores. As Berkowitz testified, this is due to logistics, because employees in the Manhattan stores generally rely on mass transportation, and assigning them to New Jersey would present difficulties in terms of their reporting to work in a timely manner. He further testified that more often employees are transferred away from the Madison Avenue store to help out in other locations because it has the most staff.

**ANALYSIS**

The Employer argues that the only appropriate unit in these circumstances must consist of all six stores in the NYCA district. In support of this position, the Employer contends that employees within each job classification perform the same job duties at each store; are subject to the same district-wide training; that the stores are all within the general New York City metropolitan area; and that hiring, compensation and other associated personnel decisions are made at the district or regional level and not by each individual store. Further, the Employer contends that there is a high degree of employee interchange, in the form of frequent temporary transfers of employees among stores in

[11] The names on the records submitted by the Employer were redacted.

the NYCA district. Petitioner, to the contrary, argues that the Employer's managerial structure and similarity in employees' job skills and functions are typical of those found in commercial retail establishments and do not rebut the single-facility presumption. The Petitioner further contends that there is no meaningful employee interchange among the six stores and that the geographical separation between and among them is substantial. As discussed below, I conclude that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining.

Section 9(b) of the Act provides that the Board "shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or a subdivision thereof." In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). There is nothing in the Act that requires that that the petitioned-for unit be the only appropriate unit, the most appropriate unit, or what could become the ultimate unit; it requires only that the unit be "appropriate." *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf'd 190 F.2d 576 (7th Cir. 1951); *Overnite Transportation Co.,* 322 NLRB 723 (1996). Moreover, a union is not required to seek representation in the most comprehensive or largest unit of employees of the employer unless an appropriate unit compatible with that requested does not exist. *P. Ballentine & Sons*, 141 NLRB 1103, 1107 (1963). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only decide whether a unit comprised only of the employees at the Madison Avenue facility is an appropriate unit. *Overnite Transportation,* supra.

When making a determination whether employees should be in a single rather than a multi-location bargaining unit, the Board has long applied the principle that a single facility location is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost

its separate identity. *J & L Plate, Inc*., 310 NLRB 429 (1993); *Centurian Auto Transport*, 329 NLRB No. 42 (1999); *Kendall Co*., 184 NLRB 847 (1970). This general rule is also applicable to retail chain store operations. *Sav-On Drugs*, 138 NLRB 1032 (1962).

The presumption regarding a single-location unit may be rebutted, but the burden is on the party opposing the appropriateness of the unit to present sufficient evidence to overcome the presumption. *J & L Plate*, supra; *Red Lobster*, 300 NLRB 908, 910-911 (1990). The party challenging the presumption "must be able to show that the day-to-day interests of employees at the single location have merged with those of the employees at the other locations." *Renzetti's Market*, 238 NLRB 174, 175 (1978). In making determinations on this issue, the Board generally looks to factors such as prior bargaining history; control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions and working conditions; degree of employee interchange and the geographical proximity to other facilities of the same employer; and whether the requested single-facility unit constitutes a homogeneous, identifiable and distinct employee grouping. *J & L Plate*, supra; *Haag Drug Company, Inc*., 169 NLRB 877 (1968).

The record establishes that the Employer's personnel policies are applicable to its facilities nationwide and thus centralized to a large degree, that employees' benefits are similar, and that they perform similar functions regardless of work location. The Board has long recognized, however, that it is common in retail chains for there to be a considerable degree of centralized administration and integration of operations. *Angeli's Super Valu*, 197 NLRB 85 (1972). Such circumstances, therefore, are not considered a "primary factor" as to whether a single-location unit is appropriate in this industry. See *Renzetti's Market*, 238 NLRB 174, 175 (1978). Moreover, uniform wages and fringe benefits and interdependence of facility operations are not controlling in determining the appropriateness of a single-facility unit. *Renzetti's Market*, supra. Nor is the fact that the

facilities are located in reasonably close proximity. *Esco Corp*., 298 NLRB 837 (1990). The most significant consideration is whether the control of day-to-day working conditions is separate and autonomous from that of other facilities: whether "the employees in issue perform their day-to-day work under the immediate supervision of one who is involved in rating employees performance, or in performing a significant portion of the hiring and firing of the employees and is personally involved with the daily matters which make up their grievance and routine problems." *Ohio Valley Supermarkets, Inc*., 323 NLRB 665, 666 (1997) (citing *Angeli's Super Valu*, supra).

In the instant case, I do not find that the record establishes such centralized control over personnel and labor relations matters so as to preclude a finding that single-store unit is appropriate. Rather, there are significant factors that support a finding that a single facility unit as sought by the Petitioner is appropriate. In this regard I note that the Board has held that it is the Employer's burden to rebut the presumption through the introduction of affirmative evidence establishing, among other things, a lack of local autonomy. *J&L Plate*, supra.

In developing the record herein, the Employer has relied almost exclusively upon Russo's testimony as to the allocation of responsibilities between the store manager and the district manager, notwithstanding the fact that the district manager was present and called to testify in the proceedings.[12] I find Russo's testimony to be, on the whole, conclusory and lacking in detail or documentation. No specific instances were presented of circumstances involving the hiring, firing, evaluations or discipline of employees, or the determination of wage rates or other specific terms and conditions of employment which would allow me to assess whether the operations of the Madison Avenue store have been so effectively merged into the operations of the other five stores as to rebut

[12] To the extent Berkowitz testified that he agreed with Russo's summary of his job responsibilities, I find such cursory, non-specific testimony to lack sufficient probative value.

the presumption of the appropriateness of a single-location facility. The record establishes that the district manager and store manager have various interactions regarding personnel matters of which Russo has largely only general and second-hand knowledge. Accordingly, I find Russo's testimony regarding such matters to be of limited probative value.

Even viewing the evidence presented in the best light for the Employer, the record establishes that each of the six stores within the NYCA has a store manager. There is no evidence that any store manager has any responsibility or authority with respect to any other facility. The mere fact that the individual store managers report to and are controlled by the same corporate officials does not require a finding that the stores are not separate and autonomous. *P & C (Cross Co.)*, 228 NLRB 1443 (1977).

The individual store manager has the authority to recommend that employees be hired for the majority of job classifications at issue. There is no specific evidence that district or regional management consistently interview or otherwise independently evaluate the credentials of the applicants. Further, there is no evidence of any occasion in which the district manager rejected the store manager's recommendation. In the absence of such evidence, I find that the individual store managers' recommendations are a significant factor in the Employer's hiring determinations. Additionally, the record establishes, in a similar vein, that store managers recommend the wage rates that sales associates, senior sales associates, tuxedo representatives and shoe managers will receive. There is no evidence that such recommendations have been rejected by higher management. The store manager evaluates employees, and the Employer relies upon these evaluations in determining whether or not to grant a wage increase to a particular employee. The store manager recommends, and issues discipline to employees. With respect to suspensions and terminations, the record establishes that all

recommendations of the Madison Avenue store manager have been followed during the past year.

The store manager additionally sets employee schedules and authorizes time off and is the only managerial personnel on site for all but one, or occasionally two, days per week. In this regard, I note that the record is silent as to how personnel matters are handled during store hours. Nor is there evidence generally regarding the manner in which the store manager or district manager supervises the store.[13] Further, the Employer has presented no affirmative evidence that the store manager is not in charge of operations of the store during any period of time, even when the district manager is on site.[14] See *Angelus Furniture Mfg. Co.*, 192 NLRB 992, 993 (1971) where the individual store manager could be said to represent "the highest level of supervisory authority present in the store for a substantial majority of time."

Thus, I conclude that the employees at issue perform their day-to-day work under the immediate supervision of someone who has a significant role in the hiring and discipline of employees, is involved in rating their performance and is personally involved in those daily matters which impact upon their terms and conditions of employment. *J&L Plate*, supra; *Ohio Valley Supermarkets, Inc*., supra.[15]

Moreover, while the evidence does establish that there is some employee interchange, this is limited, by and large, to the three Manhattan stores and not the six-

[13] Compare *Pep Boys-Manny, Joe & Jack*, 172 NLRB 246 (1968) where the Board found the single location presumption rebutted where the store manager's authority was limited such that district manager involved himself directly in the day-to-day operations of the store, instructing employees with regard to display, selling and stock control. The district manager also conducted initial interviews of applicants for employment and made a written recommendation which was forwarded along with the application to the employer's headquarters for a final decision.

[14] Moreover, the role the assistant manager plays in the Employer's operations was not explored in the record. The fact that there is a manager on staff subordinate to the store manager, however, tends to support the conclusion that the store manager has significant managerial authority.

[15] Additionally, there is no bargaining history relating to the facilities at issue and no labor organization seeks to represent the employees on a broader basis. *Renzetti's Market*, supra at 176.

store configuration the Employer suggests.[16] I further find that Employer's claims regarding the frequency with which such transfers occur to be rebutted by its own records, which demonstrate relatively few individual instances of short-term temporary transfers among the Manhattan stores. Thus, during a nine-month period, out of a total work force consisting of 100 or so employees at any given time, the record reflects, in total, approximately 30 individual occasions where employees were transferred, for brief periods of one or two days.[17] Thus, the ratio of work exchanged to that performed, in light of other factors outlined above, is not so significant or substantial to rebut the single-location presumption.

In support of its position, the Employer cites a number of cases, which are distinguishable on their facts. For example, in *Globe Furniture Rentals*, 298 NLRB 288 (1990), the Board found that the single-facility presumption had been rebutted. The record therein, however, demonstrated that all policies regarding wages, hours, terms and conditions of employment and personnel rules were formulated by centralized management, and uniform among stores. Significantly, the employer's vice president or other upper management officials had the authority for virtually all personnel actions. With regard to the individual facility managers, the Board found that their authority was so circumscribed that, "*at best*, the facts demonstrate that the store managers are statutory supervisors under Section 2(11) of the Act." Id at 290. (emphasis supplied). Similarly, in *Queen City Distributing Co*., 272 NLRB 621 (1984), also relied upon by the Employer, the Board found that the facilities in question were managed almost entirely

[16] The record is silent as to how far the New Jersey stores are from the Manhattan locations. I take administrative notice of the fact that the three Manhattan stores are located within several miles of each other, and are accessible by public transportation. The New Jersey stores, on the other hand, are located in suburban areas, across the Hudson River, at a significant distance from the Manhattan locations.

[17] With respect to the temporary transfer of employees subsequent to the events of September 11, I conclude that this exceptional circumstance is reflective of the centralized nature of the Employer's operations on whole, but is not of particular significance in establishing that the Madison Avenue store is not, by itself, an appropriate unit.

by the two co-owners who established and made all significant decisions affecting the business. The record established that merchandise was centrally received and transferred between the stores and there was substantial employee interchange on a regular basis. The local store manager's authority was limited as the co-owners maintained centralized control over the establishment and implementation of uniform operational and labor relations policies, procedures and practices. The evidence established that the co-owners directly monitored and supervised the daily activities at each the employer's five facilities through regular visits, as well as numerous daily phone calls. Although the store manager made recommendations regarding hiring and discipline of employees, the record evidence established that such recommendations were reviewed and investigated by the co-owners and, further, there was specific, detailed evidence that the store manager's recommendations were not consistently followed. In the instant case, the Employer is large corporate enterprise with a multi-layered managerial hierarchy. There is no evidence in the record that any of the store manager's recommendations regarding hiring, wage rates, suspensions or terminations were not followed by corporate management. Further, there is no evidence that the district or regional manager exercise day-to-day control over the operations of the stores. Likewise, in *Budget Rent A Car Systems*, 337 NLRB No. 147 (2002), cited by the Employer, the branch managers at the two petitioned-for stores had little or no input into hiring, terminations, serious discipline, wages, benefits or scheduling overtime; control of labor relations was centralized; there was substantial functional integration and employee contact among the stores; and job functions and terms and conditions of employment were identical from store to store. And, *in R & D Trucking, Inc*., 327 NLRB 531 (1999), the Board found that employees in two employer locations were commonly supervised by the employer's president. The evidence established that the president made the hiring and firing decisions, imposed discipline, granted wage increases and

assigned work at both employer locations. In particular, the Board found that there was no separate supervision of employees at the petitioned-for location. There was no local manager or evidence that any of the employees were designated "in charge" or a "responsible employee" or even that any of the employees acted in a lead person capacity. These factors, considered in light of evidence of a history of regular and substantial interchange of employees between the two locations, centralized control over operations, personnel functions and labor relations, similarity in terms and conditions of employment for all employees and similarity of skills and functions rebutted the single-location presumption.

In reviewing the record, I find that the Employer has not met its burden of overcoming the presumptive appropriateness of the single-store unit. The record fails to establish that the Madison Avenue store does not operate as an individual entity on a day-to-day basis. I find, rather, that substantial autonomy is exercised on a single-store level. In such circumstances, the Board's unit determinations are made to accord employees the fullest freedom in exercising those rights guaranteed by the Act. Accordingly, I conclude that the unit sought by the Petition is appropriate. [18]

Based upon the record, I find that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time wardrobe consultants, tailors, senior sales associates, sales associates, tuxedo representatives and shoe managers employed by the Employer at its store located at 380 Madison Avenue, New York, New York.

[18] As noted above, it appears from the Petitioner's brief that they are no longer contending that the shoe manager is a supervisor within the meaning of the Act. The record fails to establish that the shoe manager possesses any of the indicia of supervisory status enumerated in Section 2(11) of the Act. Rather, the evidence establishes that the shoe manager works along with other unit employees, is compensated in a similar fashion, is subject to the same supervision and other terms and conditions of employment. I therefore conclude that the shoe manager has a community of interest with the other petitioned-for employees and is appropriately included in the unit found to be appropriate herein.

Excluded: All other employees, including store mangers, assistant store mangers, field operator trainers, other managerial employees and guards, professional employees and supervisors as defined in the Act.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time[19] and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.[20] Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months

[19] Pursuant to Section 101.21(d) of the Board's Statement of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

[20] Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01am on the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior top 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

before the election date and who have been permanently replaced.[21] Those eligible shall vote on whether or not they desire to be represented for collective-bargaining purposes by Local 1102, RWDSU, UFCW, AFL-CIO, CLC.[22]

Dated at New York, New York
November 13, 2002

(s)_____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Rm. 3614
New York, New York 10278

Code: 420-0150
420-4000
420-4025
420-5027
440-3300

[21] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear*, *Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (l969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **November 20, 2002.** No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

[22] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board no later than **November 27, 2002**.